

1 ANDREW H. BAKER, SBN 104197
2 **BEESON, TAYER & BODINE, APC**
3 1404 Franklin Street, 5th Floor
4 Oakland, CA 94612
5 Telephone: (510) 625-9700
6 Facsimile: (510) 625-8275
7 Email: abaker@beesontayer.com

8 Attorneys for Plaintiff
9 Teamsters Local 853, IBT, CTWC

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 TEAMSTERS LOCAL 853,
14 INTERNATIONAL BROTHERHOOD
15 OF TEAMSTERS, CTWC,

16 Plaintiff,

17 v.

18 A & W DISTRIBUTORS, INC. (a
19 California Corporation), dba A & W
20 Distributors; ENOCH, INC. (a California
21 Corporation) dba A & W Distributors;
22 DANIEL KO dba A & W Distributors;
23 TERESA KO dba A & W Distributors,

24 Defendants.

Case No. C-07-02436 EMC

**COMPLAINT TO ENFORCE GRIEVANCE
AWARD UNDER LABOR AGREEMENT**

[29 U.S.C. §185, *et seq*]

25 **JURISDICTION/VENUE (INTRADISTRICT ASSIGNMENT)**

26 1. This is an action for legal relief pursuant to Section 301 of the Labor Management
27 Relations Act, as amended (29 U.S.C. §185, *et seq.*). Jurisdiction of the subject matter of this
28 proceeding is based on 29 U.S.C. §185(c).

29 2. The acts and/or omissions alleged herein arose in the County of Alameda and thus
30 this matter is properly assigned to the Oakland or San Francisco Division of the Northern District
31 Court.

PARTIES

3. Plaintiff TEAMSTERS LOCAL 853, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CTWC (herein, "the Union"), is a labor organization which represents employees working in Northern California, including Alameda County. The office and headquarters of the Union are in San Leandro, Alameda County, California.

4. At all times material herein, Defendant A & W DISTRIBUTORS, INC., doing business as A & W DISTRIBUTORS, was an ice-cream and milk distributor engaged in business in the County of Alameda.

5. It is alleged and believed that at all times material herein, Defendant ENOCH, INC., a California Corporation, was doing business as A & W DISTRIBUTORS and/or that A & W DISTRIBUTORS was owned and operated by ENOCH, INC.

6. It is alleged and believed that at all times material herein, Defendant DANIEL KO was doing business as A & W DISTRIBUTORS and/or that A & W DISTRIBUTORS was owned and operated by DANIEL KO.

7. It is alleged and believed that at all times material herein, Defendant TERESA KO was doing business as A & W DISTRIBUTORS and/or that A & W DISTRIBUTORS was owned and operated by TERESA KO.

8. At all times material herein, A & W DISTRIBUTORS was an employer engaged in an industry affecting commerce within the meaning of the Labor Management Relations Act, as amended (29 U.S.C. § 152(2)(6) and(7)).

STATEMENT OF CLAIM

9. At all times material herein, A & W DISTRIBUTORS and the Union were parties to a written collective bargaining agreement ("the Agreement"), a copy of which is attached as Exhibit "A" to the Complaint in this case, and which is incorporated herein by reference as though fully set forth.

10. Article 26 of the Agreement establishes procedures by which disputes arising under the Agreement are to be resolved. Article 26 provides that such disputes, if not resolved

1 by informal discussions among the parties, may be submitted to an arbitrator for resolution, and
2 that the decision of the arbitrator shall be final and binding on the parties.

3 11. On August 29, 2006, the Union and A & W DISTRIBUTORS, represented by
4 Defendant TERESA KO, appeared before Arbitrator Morris Davis pursuant to the arbitration
5 provisions contained in Article 26 of the Agreement to resolve grievances the Union had filed
6 with A & W DISTRIBUTORS alleging certain violations of the parties' Agreement with respect
7 to three employees represented by the Union under the Agreement, Kent Nugen, Ron Arioto, and
8 Tony Crociani ("the Grievants"). Both parties were permitted to present evidence and arguments
9 to the arbitrator.

10 12. On November 13, 2006, the arbitrator issued his Opinion and Award sustaining
11 the Union's grievances. A copy of the arbitrator's November 13, 2006, Opinion and Award is
12 attached as Exhibit "B" to the Complaint in this case, and is incorporated herein by reference as
13 though fully set forth.

14 13. On November 17, 2006, the arbitrator issued a Corrected Award, correcting the
15 Award issued November 13, 2006. A copy of the arbitrator's November 17, 2006, Corrected
16 Award is attached as Exhibit "C" to the Complaint in this case, and is incorporated herein by
17 reference as though fully set forth.

18 14. In his November 13, 2006, Award, as corrected November 17, 2006, the arbitrator
19 retained jurisdiction over all disputes related to implementation of his Award. Thereafter, a
20 dispute arose between A & W DISTRIBUTORS and the Union over implementation of the
21 arbitrator's Award.

22 15. On February 2, 2007, the arbitrator issued a Supplemental Order resolving the
23 disputes between the parties over implementation of his Award. In his Supplemental Order, the
24 arbitrator ordered A & W DISTRIBUTORS to make the following payments to the Grievants:

25 1. To Grievant Kent Nugen:

- | | | |
|----|---|------------|
| 26 | • For improper layoff in August 2005: | \$1,267.20 |
| 27 | (Based on eight days (64 hours) owed for lost | |
| 28 | work days from August 22 - August 31, 2005, | |
| | at \$19.80 per hour.) | |
| | • Two weeks (80 hrs) severance pay at \$19.80 per hour: | \$1,584.00 |

- 1 Total due Grievant Nugen \$2,851.20
- 2 2. To Grievant Ron Arioto:
- 3 • Ten weeks (400 hours) severance pay at \$19.80 per hour: \$7,920.00
- 4 3. To Grievant Tony Crociani:
- 5 • Ten weeks (400 hours) severance pay at \$19.80 per hour: \$7,920.00

6 A copy of the arbitrator's February 2, 2007, Supplemental Order is attached as Exhibit "D" to the
7 Complaint in this case, and is incorporated herein by reference as though fully set forth.

8 16. At all times since February 2, 2007, A & W DISTRIBUTORS has failed and
9 refused, and continues to fail and refuse, to comply with the arbitrator's Supplemental Order.

10 17. A & W DISTRIBUTORS has failed and refused to comply with the arbitrator's
11 Supplemental Order in bad faith and for reasons that are frivolous, vexatious or oppressive.

12

13 **WHEREFORE, Plaintiff prays** that this Court assume jurisdiction over this Complaint,
14 and following a hearing thereon, issue its Order as follows:

- 15 1. Confirming the arbitrator's Opinion and Award, Corrected Award, and
16 Supplemental Order as set forth above;
- 17 2. Directing Defendants to pay the following sums to the following individuals:
- 18 a. Kent Nugen - \$2,851.20;
- 19 b. Ron Arioto - \$7,920.00; and
- 20 c. Tony Crociani - \$7,920.00;
- 21 3. Directing Defendants to reimburse Plaintiff for its attorney's fees and costs of suit
22 herein; and
- 23 4. Directing such other and further relief as the Court deems just and proper.

24 Date: May 7, 2007

Respectfully submitted,

25 BEESON, TAYER & BODINE, APC

26 By: /s/Andrew H. Baker

27 ANDREW H. BAKER

28 Attorneys for TEAMSTERS LOCAL 853

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28